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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MARK A. ARTHUR, et al.,

11 Plaintiffs,

12 v.

13 SALLIE MAE, INC.,

14 Defendant.

CASE NO. C10-0198JLR

SHOW CAUSE ORDER
REGARDING MOTION FOR
ATTORNEYS' FEES AND
COSTS

15
16 Before the court is Plaintiffs' motion for attorneys' fees and costs (Dkt. # 51) and
17 the parties' joint motion for final approval of class action settlement (Dkt. # 50). Both
18 motions were filed with the court on November 16, 2010. The joint motion for final
19 approval includes a copy of the final notice that was distributed to Class Members. (*See*
20 Keough Decl. (Dkt. # 61), Exs. B & C.) The final notice instructs Class Members as
21 follows:

22
SHOW CAUSE ORDER REGARDING MOTION FOR ATTORNEYS' FEES AND
COSTS - 1

1 This Notice is only a summary of relevant court documents and the
2 Settlement Agreement. Complete copies of case-related documents are
3 available at www.ArthurTCPASettlement.com. This Notice may also be
4 viewed at that web site.

5 (Id. at 21, 28.) The final notice provides, however, that Plaintiffs will post their motion
6 for attorneys' fees and costs on the web site *after* December 20, 2010, despite having
7 filed the motion on November 16, 2010. (Id.)

8 The court is concerned that the Class Members may have been lead to believe that
9 "complete copies of case-related documents" could be found on the web site and thus
10 they did not need to access the court's docket on a regular basis to learn of new filings.
11 These Class Members would therefore be unaware of Plaintiffs' motion for attorneys'
12 fees and costs and thus may have been "deprived of an adequate opportunity to object to
13 the motion itself." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th
14 Cir. 2010) ("Allowing class members an opportunity thoroughly to examine counsel's fee
15 motion, inquire into the bases for various charges and ensure that they are adequately
16 documented and supported is essential for the protection of the rights of class members.")
17 The court cannot reconcile the final notice's statement that Plaintiffs will post their
18 motion for attorneys' fees and costs on the web site *after* the Class Members' opportunity
19 to file objections has expired with the Ninth Circuit's holding in *In re Mercury*
20 *Interactive*.¹

21 _____
22 ¹ The court has reviewed the web site identified in the final notice sent to Class Members
and determined that Plaintiffs' motion for attorneys' fees and costs was not available nor
identified on the web site. (www.ArthurTCPASettlement.com last visited December 13, 2010.)

1 Accordingly, the court orders Plaintiffs to file a response to the issues raised in
2 this order by 4:30 p.m. on Thursday, December 16, 2010.

Dated this 13th day of December, 2010.

John P. Blit

JAMES L. ROBART
United States District Judge